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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

REZA DOWLATSHAHI et al.,

Plaintiffs and Appellants,

v.

ALEXANDER H. ESCANDARI et al.,

Defendants and Respondents.

B260208

(Los Angeles County
Super. Ct. No. BC496854)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Yvette M. Palazuelos, Judge. Reversed.

Gielegghem Law Office and Neil Gielegghem for Plaintiffs and Appellants.

L.A. Trial Lawyers, Inc., Alexander H. Escandari, in pro. per., and Sahar
Malek for Defendants and Respondents.

Plaintiffs Reza and Soraya Dowlatshahi appeal from the trial court's order denying their request for attorney fees and costs following the granting of their special motion to strike (Code Civ. Proc., § 425.16, the SLAPP statute).¹ The motion was directed at, and disposed of, one of three claims against them in the cross-complaint filed by defendant Alexander Escandari and his law firms.

We conclude that the trial court used an improper standard in denying plaintiffs' request for attorney fees and costs under section 425.16, subdivision (c)(1). We therefore reverse the order denying attorney fees and costs, and remand the case for the trial court to exercise its discretion to determine whether plaintiffs should be deemed prevailing parties under the standard applicable to partially successful SLAPP motions. (See *Mann v. Quality Old Time Service, Inc.* (2006) 139 Cal.App.4th 328, 340 ["a party who partially prevails on an anti-SLAPP motion must generally be considered a prevailing party unless the results of the motion were so insignificant that the party did not achieve any practical benefit from bringing the motion"] (*Mann*).) If plaintiffs are deemed prevailing parties, the court must make an award of reasonable attorney fees and costs, including attorney fees related to this appeal. If the court concludes that plaintiffs are not prevailing parties, the court should deny an award of attorney fees and costs.

BACKGROUND

Because the only issue is the trial court's denial of attorney fees, our discussion of the underlying proceedings is brief.

¹ All undesignated section references are to the Code of Civil Procedure.

As here relevant, plaintiffs sued defendants Alexander Escandari and his law firms (hereafter collectively “defendant”),² for breach of contract and violation of Business and Professions Code section 17200.³ According to the first amended complaint, defendant represented plaintiffs “in connection with legal issues” arising from their ownership of a single family home in Bel Air. In exchange for legal services, defendant took title to the home via quit claim deed, but never recorded it. He then represented plaintiffs in three lawsuits from March 2011 through March 2012 relating to the home, including one against their homeowner’s association. Plaintiffs alleged a litany of ways in which defendant breached the contract for his services, including abandoning them in the lawsuits.

In response to the complaint, defendant filed a cross-complaint against plaintiffs and their current attorney, Neil Gielegghem and the Gielegghem Law Office (hereafter Gielegghem). Gielegghem had replaced defendant as plaintiffs’ attorney in the litigation commenced by defendant. Defendant’s cross-complaint alleged causes of action against plaintiffs for breach of contract and fraud, and also alleged a cause of action against plaintiffs and Gielegghem for comparative indemnity. Plaintiffs demurred to all the causes of action, and as to the comparative indemnity claim also filed a SLAPP motion. In the SLAPP motion, plaintiffs’ sought attorney fees of \$12,675 for Gielegghem’s services related to the motion, as well as incidental costs. Defendant opposed the motion, and also sought attorney fees, contending that the motion was frivolous.

² Plaintiffs alleged that Escandari practiced under the following designations: “Escandari & Michon,” “Escandari Law Firm, Inc.,” and “L.A. Trial Lawyers, Inc.”

³ Plaintiffs also filed claims for legal malpractice and fraud, but the trial court sustained defendant’s demurrer without leave to amend as to these claims. Further, plaintiffs named Golnoush Goharзад as a defendant. Goharзад is not a party to this appeal.

In ruling on plaintiffs’ demurrer to defendant’s cross-complaint, the trial court sustained the demurrer to fraud claim with leave to amend, and to the breach of contract and comparative indemnity claims without leave to amend. Regarding plaintiffs’ SLAPP motion as to the comparative indemnity claim, the court granted the motion. (See *White v. Lieberman* (2002) 103 Cal.App.4th 210, 220 [order sustaining demurrer without leave to amend does not moot SLAPP motion, because prevailing defendant is generally entitled to award of attorney fees].) The court concluded that defendant’s comparative indemnity claim arose from Gieleghem’s constitutionally protected litigation activity in representing plaintiffs as defendant’s successor in the cases initiated by defendant, and that defendant failed to show a probability of prevailing on the merits.

In ruling on the question of attorney fees, the court stated in its order: “Because the parties’ briefing demonstrates the complexity of the SLAPP/anti-SLAPP law and good faith effort to apply it to the instant Complaint and Cross-complaint, neither party is awarded costs or attorney fees.”

Plaintiffs filed a timely notice of appeal from the order denying attorney fees.

DISCUSSION

Plaintiffs contend that the trial court erred in denying their request for attorney fees and costs after granting their SLAPP motion. We agree.

Section 425.16, subdivision (c)(1) provides in relevant part “a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney’s fees and costs.” As stated by our Supreme Court, this “fee-shifting provision was apparently intended to discourage . . . strategic lawsuits against public participation by imposing the litigation costs on the party seeking to ‘chill

the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances.’ [Citation.] The fee-shifting provision also encourages private representation in SLAPP cases, including situations when a SLAPP defendant is unable to afford fees or the lack of potential monetary damages precludes a standard contingency fee arrangement.” (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131.)

Section 425.16, subdivision (c)(1) awards attorney fees and costs only to a “prevailing” party. Here, plaintiffs’ SLAPP motion was directed to only one cause of action in defendant’s cross-complaint – the comparative indemnity claim. It did not challenge the breach of contract and fraud claims. Thus, plaintiff’s motion did not dispose of the entire case. This situation is analogous to that in which a SLAPP motion challenges all causes of action, but is only partly successful. As reasoned in *Mann, supra*, 139 Cal.App.4th at pages 339-340, “a party need not succeed in striking every challenged claim to be considered a prevailing party within the meaning of section 425.16. A contrary conclusion would require a partially prevailing defendant to bear the entire cost of the anti-SLAPP litigation at the outset of the case. This would create a strong disincentive for a defendant to bring the motion, undermining the legislative intent to encourage defendants to utilize the anti-SLAPP procedure to eliminate SLAPP claims and to discourage plaintiffs from bringing meritless SLAPP claims. [Citation.] On the other hand, there is no reason to encourage a defendant to bring an anti-SLAPP motion where the factual and legal grounds for the claims against the defendant remain the same after the resolution of the anti-SLAPP motion. [Citation.] Where the results of the motion are “‘minimal’” or ‘insignificant’ a court does not abuse its discretion in finding the defendant was not a prevailing party. [Citations.] [¶] We thus hold that a party who partially prevails on an anti-SLAPP motion must generally be

considered a prevailing party unless the results of the motion were so insignificant that the party did not achieve any practical benefit from bringing the motion. The determination whether a party prevailed on an anti-SLAPP motion lies within the broad discretion of a trial court.”

Here, in denying plaintiffs’ request for attorney fees, the trial court did not determine whether the granting of the SLAPP motion as to the comparative indemnity claim was so insignificant as to be of no practical benefit. It is true that in ruling on defendant’s demurrer the court granted leave to amend the fraud claim, and dismissed the comparative indemnity claim, along with the breach of contract claim, without leave to amend. But the court did not refer to that ruling, or to any other practical consideration, in determining whether plaintiffs should be deemed prevailing parties on the SLAPP motion under section 425.16, subdivision (c)(1). Rather, the court denied attorney fees and costs on the ground that “the parties’ briefing demonstrates the complexity of the SLAPP/anti-SLAPP law and good faith effort to apply it.”

Defendant contends that these considerations – the complexity of the law and his good faith in pursuing his comparative indemnity claim – are relevant considerations in determining whether an award of attorney fees would further the purposes of the fee shifting provision of section 425.16, subdivision (c)(1). However, as we have discussed, the case law is to the contrary. The relevant consideration is whether by obtaining dismissal of the comparative indemnity claim, plaintiffs should be deemed “prevailing” parties. In that determination, the trial court looks to the practical effect of the partially successful SLAPP motion, not to the complexity of the law or the parties’ good faith. (See *Moran v. Endres* (2006) 135 Cal.App.4th 952, 954 [fees denied where defendant obtained dismissal of a purported cause of action for conspiracy; the dismissal had no practical effect

because other numerous substantive tort claims remained unaffected]; see also *Lin v. City of Pleasanton* (2009) 176 Cal.App.4th 408, 426 [“fee award is not required when the [SLAPP] motion, though partially successful, was of no practical effect”]; *Morrow v. Los Angeles Unified School District* (2007) 149 Cal.App.4th 1424, 1446 [denial of attorney fees proper only when granting of SLAPP motion “accomplishes nothing of practical consequence”].)

Thus, we conclude that the trial court used an improper standard in denying plaintiffs’ request for attorney fees and costs. The case must be remanded to the trial court. On remand, the trial court must exercise its discretion to determine whether plaintiffs should be deemed prevailing parties under the standard applicable to partially successful SLAPP motions. (See *Mann, supra*, 139 Cal.App.4th at p. 340.) We express no opinion on that issue. If plaintiffs are deemed prevailing parties, the court must make an award of reasonable attorney fees and costs under section 425, subdivision (c)(1), including attorney fees related to this appeal. If plaintiffs are not deemed prevailing parties, the court should deny an award of attorney fees and costs.

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DISPOSITION

The order denying plaintiffs' request for attorney fees and costs under section 425.16, subdivision (c)(1) is reversed. The case is remanded to the trial court, with the following directions: (1) the trial court must exercise its discretion to determine whether plaintiffs should be deemed prevailing parties under the standard applicable to partially successful SLAPP motions (see *Mann, supra*, 139 Cal.App.4th at p. 340); (2) if they are deemed prevailing parties, the court must make an award of reasonable attorney fees and costs, including attorney fees relating to this appeal; and (3) if they are not deemed prevailing parties, the court should deny an award of attorney fees and costs.

Plaintiffs shall recover the costs of this appeal.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

COLLINS, J.